

103D CONGRESS
1ST SESSION

H. R. 3654

To amend title 28, United States Code, to divide the ninth judicial circuit of the United States into two circuits, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 1993

Mr. KOPETSKI (for himself, Mrs. UNSOELD, Mr. FARR of California, Mr. YOUNG of Alaska, and Mr. SMITH of Oregon) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to divide the ninth judicial circuit of the United States into two circuits, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ninth Circuit Court
5 of Appeals Reorganization Act of 1993”.

6 **SEC. 2. CREATION OF TWELFTH CIRCUIT.**

7 (a) COMPOSITION OF FIFTH AND TWELFTH CIR-
8 CUI TS.—Section 41 of title 28, United States Code, is
9 amended—

1 (1) in the text before the table, by striking
 2 “thirteen” and inserting “14”;

3 (2) in the table, by striking the item relating to
 4 the ninth circuit and inserting the following new
 5 item:

“Ninth Alaska, Idaho, Montana, Oregon,
 Washington, Hawaii, Guam, the
 Northern Mariana Islands, and the
 Northern and Eastern Districts of
 California.”;

6 and

7 (3) by inserting after the item relating to the
 8 eleventh circuit the following new item:

“Twelfth Arizona, Nevada, and the Central and
 Southern Districts of California.”.

9 (b) NUMBER OF CIRCUIT JUDGES.—The table con-
 10 tained in section 44(a) of title 28, United States Code,
 11 is amended—

12 (1) in the item relating to the ninth circuit by
 13 striking “28” and inserting “14”; and

14 (2) by inserting after the item relating to the
 15 eleventh circuit the following:

“Twelfth “14”.

16 (c) PLACES FOR HOLDING COURT.—The table con-
 17 tained in section 48(a) of title 28, United States Code,
 18 is amended—

19 (1) in the item relating to the ninth circuit by
 20 striking “Los Angeles”; and

1 (2) by inserting after the item relating to the
 2 eleventh circuit the following:

“Twelfth Los Angeles, Reno, and Phoenix.”.

3 **SEC. 3. RESOLUTION OF INTERCIRCUIT CONFLICTS.**

4 (a) SPECIAL PANEL.—Section 46 of title 28, United
 5 States Code, is amended—

6 (1) by amending the section heading to read as
 7 follows:

8 **“§ 46. Assignment of judges; panels; hearings;**
 9 **Intercircuit Court; quorum”;**

10 (2) in subsection (d)—

11 (A) by redesignating such subsection as
 12 subsection (e); and

13 (B) by striking “paragraph (c)” and in-
 14 serting “subsections (c) and (d)”; and

15 (3) by inserting after subsection (c) the follow-
 16 ing:

17 “(d)(1) The judges of the Courts of Appeals for the
 18 Ninth and Twelfth Circuits whose official duty stations
 19 are in the State of California shall constitute the
 20 Intercircuit California En Banc Court. The Intercircuit
 21 Court shall convene as necessary to resolve any conflict
 22 between a decision of the Court of Appeals for the Ninth
 23 Circuit and a decision of the Court of Appeals for the
 24 Twelfth Circuit that results or is likely to result in the

1 imposition of inconsistent or otherwise nonuniform Fed-
2 eral law within the State of California.

3 “(2) An appeal or other proceeding shall be reheard
4 by the Intercircuit Court upon a majority vote of the
5 judges of that court who are in regular active service. Any
6 judge of the Intercircuit Court who is in regular active
7 service may request a vote to determine whether a decision
8 of the Court of Appeals of which that judge is a member
9 should be ordered reheard by the Intercircuit Court. The
10 appropriateness of rehearing by the Intercircuit Court
11 may be suggested by a party, but a vote of the Intercircuit
12 Court to order rehearing shall not be taken unless re-
13 quested by a judge of the Intercircuit Court who is in reg-
14 ular active service and who is a member of the Court of
15 Appeals in which the appeal or other proceeding is pend-
16 ing.

17 “(3) Rehearing by the Intercircuit Court shall not be
18 favored and ordinarily shall be considered only when the
19 failure to resolve a conflict described in paragraph (1)
20 would be unusually burdensome to the administration of
21 Federal law within the State of California.

22 “(4) The clerk of the Court of Appeals for the Ninth
23 Circuit, and the clerk of the Court of Appeals for the
24 Twelfth Circuit, shall, during alternate 2-year periods,
25 serve as the clerk of the Intercircuit Court and shall pro-

1 vide such services as are needed by the Intercircuit
2 Court.”.

3 (b) CONFORMING AMENDMENT.—The item relating
4 to section 46 in the table of sections at the beginning of
5 chapter 3 of title 28, United States Code, is amended to
6 read as follows:

“46. Assignment of judges; panels; hearing; Intercircuit Court; quorum.”.

7 **SEC. 4. ASSIGNMENT AND SENIORITY OF JUDGES.**

8 (a) ACTIVE SERVICE JUDGES.—

9 (1) NEW NINTH CIRCUIT.—Each circuit judge
10 in regular active service of the former ninth circuit
11 whose official duty station on the day before the ef-
12 fective date of this Act is in Alaska, Idaho, Mon-
13 tana, Oregon, Washington, Hawaii, Guam, the
14 Northern Mariana Islands, or the Northern or East-
15 ern District of California is assigned as a circuit
16 judge of the new ninth circuit as of such effective
17 date.

18 (2) TWELFTH CIRCUIT.—Each circuit judge in
19 regular active service of the former ninth circuit
20 whose official duty station on the day before the ef-
21 fective date of this Act is in Arizona, Nevada, or the
22 Central or Southern District of California is as-
23 signed as a circuit judge of the twelfth circuit as of
24 such effective date.

1 (b) SENIOR JUDGES.—Each judge who is a senior
2 judge of the former ninth circuit on the day before the
3 effective date of this Act may elect to be assigned to the
4 new ninth circuit or to the twelfth circuit and shall notify
5 the Director of the Administrative Office of the United
6 States Courts of such election.

7 (c) SENIORITY.—The seniority of each judge—

8 (1) who is assigned under subsection (a), or

9 (2) who elects to be assigned under subsection

10 (b),

11 shall run from the date of the commission of such judge
12 as a judge of the former ninth circuit.

13 **SEC. 5. PENDING PROCEEDINGS.**

14 The following applies to any case in which, on the
15 day before the effective date of this Act, an appeal or other
16 proceeding has been filed with the former ninth circuit:

17 (1) If the matter has been submitted for deci-
18 sion, further proceedings in respect of the matter
19 shall be had in the same manner and with the same
20 effect as if this Act had not been enacted.

21 (2) If the matter has not been submitted for de-
22 cision, the appeal or proceeding, together with the
23 original papers, printed records, and record entries
24 duly certified, shall, by appropriate orders, be trans-
25 ferred to the court to which it would have gone had

1 this Act been in full force and effect at the time
2 such appeal was taken or other proceeding com-
3 menced, and further proceedings in respect of the
4 case shall be had in the same manner and with the
5 same effect as if the appeal or other proceeding had
6 been filed in such court.

7 (3) A petition for rehearing or a petition for re-
8 hearing en banc in a matter decided before the effec-
9 tive date of this Act, or submitted before the effec-
10 tive date of this Act and decided on or after the ef-
11 fective date as provided in paragraph (1) of this sec-
12 tion, shall be treated in the same manner and with
13 the same effect as though this Act had not been en-
14 acted. If a petition for rehearing en banc is granted,
15 the matter shall be reheard by a court comprised as
16 though this Act had not been enacted.

17 **SEC. 6. TRANSITIONAL PROVISION.**

18 The new ninth circuit and the twelfth circuit shall
19 be deemed to be a single circuit for purposes of sections
20 291(a) and 292(a) of title 28, United States Code, with
21 respect to any judge serving in the former ninth circuit
22 on the day before the effective date of this Act.

23 **SEC. 7. DEFINITIONS.**

24 As used in sections 4, 5, and 6—

1 (1) the term “former ninth circuit” means the
2 ninth judicial circuit of the United States as in ex-
3 istence on the day before the effective date of this
4 Act;

5 (2) the term “new ninth circuit” means the
6 ninth judicial circuit of the United States established
7 by the amendment made by section 2(a)(2); and

8 (3) the term “twelfth circuit” means the twelfth
9 judicial circuit of the United States established by
10 the amendment made by section 2(a)(3).

11 **SEC. 8. ADMINISTRATIVE ACTIONS.**

12 The court of appeals for the ninth circuit as con-
13 stituted on the day before the effective date of this Act
14 may take such administrative action as may be required
15 to carry out this Act. Such court shall cease to exist for
16 administrative purposes on July 1, 1997.

17 **SEC. 9. EFFECTIVE DATE.**

18 This Act and the amendments made by this Act shall
19 take effect on October 1, 1994.

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